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United States Senate

April 27, 2018

COMMITTEES:
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COMMISSION ON SECURITY
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The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Comment on Disposal of Coal Combustion Residuals from Electric Utilities; Amendments to the National Minimum Criteria (Phase One); Proposed Rule, 40 Fed. Reg. Part 257 (March 15, 2018), Docket ID No. EPA-HQ-OLEM-2017-0286

Dear Administrator Pruitt:

I am concerned about the EPA's recent proposal to substantially revise the coal combustion residual rule adopted in March 2015. The proposal weakens protections for Americans from the second largest stream of industrial pollution.

The protections under the 2015 rule are just beginning to take effect. Thousands of pages of data from utilities describing the results of groundwater monitoring near these facilities have recently become available. While difficult to analyze in the short term, those data clearly demonstrate that there are high levels of toxic pollution impacting communities across the country. Changing the rule now, without accounting for this information, suggests that the EPA is not concerned about the impacts this pollution is having on these communities.

Further, Congress addressed this issue at the end of 2016 in the Water Infrastructure for Improvements to the Nation Act (WIIN,) providing for state permitting programs so long as they are at least as protective as the federal program. This represents a compromise that was backed by the very special interests that are pushing for the additional changes in the proposal.

I understand the interest in each state being able to deal with coal ash in a manner consistent with the individual conditions in each state. However, this also means each state should respect the right of any other state to set their own standards as well, and to not violate those standards. A federal floor—and each state respecting the other in turn—ensures that one state's resources will receive the protection they deem necessary regardless of decisions made in another state.

I am further concerned that the public has only had 45 days to comment on this proposal. The 2015 rule took nearly seven years to complete; upending such a carefully considered decision with minimal opportunity for public comment is arbitrary, and suggests a pre-determined outcome.

The proposal is both premature and unwarranted. It attacks the core health and environmental protections of the 2015 rule and replaces consistent federal requirements with state-by-state determinations. EPA is even suggesting that the operators of these coal ash facilities themselves will be allowed to determine what level of protection is necessary.


In particular, the proposal undermines several key substantive protections in the 2015 rule. Under existing law, polluters must carefully monitor their sites, and clean-up all of their groundwater pollution if it is detected. The proposal allows alternative (and potentially much weaker) standards for many pollutants, and provides broad discretion to states as to where groundwater monitoring is conducted. It even allows polluters to avoid cleaning up their sites at all, even if these weaker triggers are met.

In those instances where clean-up is required, the proposal further weakens protections. It removes the requirement that facilities demonstrate that their cleanups meet groundwater protection standards over a three-year period. It reduces post-closure monitoring. And it allows all of these decisions to be certified by state regulators, rather than professional engineers, taking away one of the few assurances that the public has regarding the efficacy of these clean-ups.

In addition to these proposals, all of which I believe should be rejected, the EPA is taking comments on other ideas which are even more outrageous. EPA is considering removing the capping requirements for these facilities, including the requirement that they not be allowed to dump coal ash directly into ground water in unlined lagoons. EPA is further suggesting that such facilities need not be closed, as required under the current rule. It boggles the mind that EPA would allow such an obviously dangerous practice be continued, let alone expanded.

I believe that EPA should not promulgate a final rule that weakens the 2015 CCR rulemaking. It must allow the provisions of that rule, buttressed by the state programs envisioned under the WIIN Act to protect public health and the environment rather than launching a pre-emptive strike that vitiates those protections.

Sincerely,

A handwritten signature in black ink that reads "Ben Cardin". The signature is written in a cursive, slightly stylized font. The first name "Ben" is written with a large, looping "B", and "Cardin" follows in a similar cursive style.

Benjamin L. Cardin
United States Senator